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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,528	04/15/2004	Cheng Shen	SP-1283	8389
44388	7590	01/11/2006	EXAMINER	
SOLAE, LLC P. O. BOX 88940 ST. LOUIS, MO 63188			WEIER, ANTHONY J	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 01/11/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/825,528

Applicant(s)

SHEN ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-83 is/are pending in the application.
- 4a) Of the above claim(s) 17-83 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I in the reply filed on 10/19/05 is acknowledged. The traversal is on the ground(s) that searching both groups would not incur an undue search because both groups of claims are classified in the same class. This is not found persuasive because, even though same are classified in the same class, the search required for each invention extends well beyond this single search area and is not completely overlapping. Moreover, the search of each invention requires different search strategy.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Shen (U.S. Patent Application No. US 20040258827).

Shen discloses an acidic beverage comprising a blend of a hydrated protein stabilizing agent (e.g. pectin and high methoxyl pectin; 0.5%) with acid (e.g. ascorbic) to provide a first component with a pH of 2-5.5 with a hydrated protein material (e.g.

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hydrolyzed soy protein isolate) having a solids content of up to 10%, said blend having a pH as called for (e.g. pH 3.8), wherein said blend having the particular ratios of the various components as called for in the instant claims (see paragraphs 28, 34, and 38-43).

4. Claims 1-6 and 10-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Huang (U.S. Patent No. 6887508).

Huang discloses an acidic beverage wherein a soybean protein isolate is hydrated, blended with a solution including high methoxyl pectin (e.g. 0.35% and pH of 3), wherein said acidic beverage is pH adjusted with, for example, citric acid to 3.85 pH.

5. Claims 1-6 and 10-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Patel et al (U.S. Patent No. 6811804).

Patel et al discloses a process of preparing an acidic beverage wherein a soybean protein isolate is hydrated, blended with a solution including high methoxyl pectin (about 2%), pH adjusted with, for example, citric acid to 4 pH.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong (U.S. Patent Application No. US 2005/0202147).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Wong et al discloses an acidic beverage comprising a blend of a hydrated protein stabilizing agent (e.g. pectin) with acid (e.g. ascorbic) to provide a first component with a hydrated protein material (e.g. hydrolyzed soy protein isolate) having a solids content of up to 10% and the amount of stabilizing agent as called for in the instant claims, said blend having a pH as called for (e.g. pH 3.8) (see paragraphs 1 and 89-101; claims 24 and 25).

Wong et al is silent regarding the pH of the combination of the hydrated protein stabilizing agent and acid. However, such determination would have been well within

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the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further obvious to have arrived at such pH value as a matter of preference.

The claims further call for the pectin used to be a high methoxyl pectin. High methyl pectin is a commercially well known form of pectin that has been used as a protein stabilizing agent as taught, for example, in Huang (see claims). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed same as matter of preference depending on, for example, cost and availability.

8. Claims 1- 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Klavons et al (U.S. Patent No. 5286511).

Klavons et al discloses a product wherein pectin (approximately 1%) is added to an acidic solution (includes citric acid) and hydrated, eventually resulting in a pH of 3.7, wherein said pectin/acidic solution is subsequently blended with a hydrated protein material (e.g. soybean protein isolate; col. 2, lines 27-32; Examples; claims 6-9). results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such values through experimental optimization.

The claims further call for the pectin used to be a high methoxyl pectin. High methyl pectin is a commercially well known form of pectin that has been used as a protein stabilizing agent as taught, for example, in Huang (see claims). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed same as matter of preference depending on, for example, cost and availability.

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The claims further call for the particular solids content in the slurry. However, such determination would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at same as a matter of preference depending on the particular aesthetic appearance desired in the final product.

Klavons et al further discloses said resulting beverage having a pH of 2-6. It would have been further obvious to have arrived at a pH within this range (as called for in the instant claims, e.g. pH 3.8) as a matter of preference.

9. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Huang (as applied above).

The claims further call for the particular solids content in the slurry. However, such determination would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at same as a matter of preference depending on the particular aesthetic appearance desired in the final product.

10. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Patel et al (as applied above).

The claims further call for the particular solids content in the slurry. However, such determination would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at same as a matter of preference depending on the particular aesthetic appearance desired in the final product.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
January 7, 2006

Anthony Weier
Primary Examiner
Art Unit 1761


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